

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

May 14, 2002

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

RECONSIDERATION OF REZONE ORDINANCE (CA NO. O-2001-80) RELATING TO
PROPOSED CARROLL CANYON BUSINESS PARK

INTRODUCTION

The developer of the proposed Carroll Canyon Business Park, Aspen Creek, LLC [Aspen] filed a lawsuit due to the City Council's decision to deny an ordinance to rezone its property (CA No. O-2001-80) [Rezone Ordinance]. As a way to resolve the litigation, Aspen is requesting that the City Council reconsider its decision regarding the adoption of the Rezone Ordinance which would rezone its property from AR-1-1 Zone to the IL-2-1 Zone. Reconsideration of the Rezone Ordinance involves a two-step process: (1) The City Council will need to waive the permanent rules of the City Council which requires six (6) votes; and, (2) Based on the waiver of the permanent rules, any member of the City Council could make a motion to reconsider, which requires five (5) votes for approval.

BACKGROUND

Aspen owns approximately 57.8 acres of land immediately east and west of Camino Ruiz along the planned alignment of Carroll Canyon Road within the Mira Mesa Community Plan Area [Site]. The Site is within Carroll Canyon and lies between an industrially developed area to the south and a residential community across a canyon to the north. Surrounding land uses include mining operations to the west and east. The Site is currently zoned agricultural and is designated for mixed use within the community plan.

In approximately October 1998, Aspen applied for discretionary permits allowing development of Carroll Canyon Business Park at the Site [Project]. The Project required a Resource Protection Ordinance permit [RPO], and a Planned Industrial Development permit [PID] (hereinafter collectively referred to as "Permits"), a Vesting Tentative Map [Map], an Environmental Impact Report [EIR] and a re-zone of the property from agricultural to light industrial.

On September 28, 2000, the San Diego Planning Commission voted 4-0 (three absent votes) to recommend approval of the Permits and the rezone.

On December 12, 2000, Council voted 6-2 in favor of certifying the EIR and approving the Permits, Map, and introduction of the ordinance to rezone the Site.

Thereafter, the California Native Plant Society [CNPS] challenged the adequacy of the EIR and accompanying permits. CNPS sued the City seeking to invalidate the final decisions of Council in connection with the approvals. At that point, the only remaining Council action necessary for the Project to move forward was adoption of the re-zone ordinance.

On March 5, 2001, Council voted 4-4 on the motion to pass the Rezone Ordinance. As a result of the tied vote, the Mayor declared that the motion failed. After some discussion, the Mayor decided to take the effect of a 4-4 vote under submission.

On March 19, 2001, the Mayor announced that a 4-4 vote meant that the motion failed. There was some discussion from Council on the possibility of reconsidering the Rezone Ordinance. At that time, there was a vacant seat in Council District 6. Council decided that any motion to reconsider should be made when all Council seats were filled.

On September 16, 2001, the City prevailed on all issues in the CNPS lawsuit challenging the EIR.¹

On June 11, 2001, Aspen filed its Petition for Writ of Mandate and Complaint for Inverse Condemnation due to Council's denial of the rezone, which effectively halted its project. The administrative record in Aspen's lawsuit has been lodged and a responsive pleading by the City is currently due on June 30, 2002. Aspen has now requested that Council reconsider its denial of the rezone request as a way to resolve the litigation.

¹ CNPS has appealed the trial court's decision. On September 26, 2001, CNPS also brought a separate lawsuit in federal court alleging violations of the Federal Endangered Species Act as a result of Council's approval of the preliminary documents and seeking to set aside the City's incidental take permit as it relates to the willow monardella.

THE HONORABLE MAYOR
AND CITY COUNCIL

-3-

May 14, 2002

CITY ATTORNEY RECOMMENDATION

The City Attorney recommends that the City Council: (1) Waive the permanent rules of the City Council for the purpose of considering the request of Aspen Creek LLC for a reconsideration of the adoption of the Rezone Ordinance identified as City Attorney No. O-2001-80; and (2) Set the matter for a publicly noticed hearing on the adoption of the Rezone Ordinance (City Attorney No. O-2001-80).

Respectfully submitted,

/ S /

CASEY GWINN
City Attorney

KRS:kat:ccm:Civ.
RC-2002-7